

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA**

**TIFFINY LONG, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ARTHUR B. LONG, JR.,**

PLAINTIFF,

v.

CASE NO. 2:18-cv-00382

**ELDERCARE OF JACKSON COUNTY LLC
D/B/A ELDERCARE HEALTH AND
REHABILITATION,**

DEFENDANT.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446 and Rule 9027 of the Federal Rules of Bankruptcy Procedure,¹ Defendant Eldercare of Jackson County LLC d/b/a Eldercare Health and Rehabilitation ("Eldercare") files this Notice of Removal of the civil action styled *Tiffany Long, as Personal Representative of the Estate of Arthur B. Long, Jr. v. Eldercare of Jackson County LLC d/b/a Eldercare Health and Rehabilitation*, Civil Action No. 17-C-122, from the Circuit Court of Jackson County, West Virginia, to the United States District Court for the Southern District of West Virginia. In support of this Notice, Eldercare states the following:

1. The Plaintiff filed her action on December 18, 2017.

¹ On May 6, 2016, Eldercare of Jackson County, LLC filed a Chapter 11 Petition in the Bankruptcy Court for the Middle District of Tennessee, Nashville Division - Case No. 3:16-bk-03308. All of Defendant's rights and protections pursuant that bankruptcy filing are expressly reserved.

2. Eldercare was served with a copy of the Complaint and Summons on February 1, 2018. This Notice of Removal is therefore timely pursuant to 28 U.S.C. § 1446(b) and Rule 9027 of the Federal Rules of Bankruptcy Procedure.

3. Venue is proper in the United States District Court for the Southern District of West Virginia because that is the district in which the state court action was filed. See 28 U.S.C. §§ 1446(a) & 104(b)(1); FRBP 9027(a)(1).

4. Pursuant to 28 U.S.C. § 1446(a), a copy of any and all process, pleadings, and orders served upon Eldercare are attached as composite Exhibit "A."

5. The Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and (2) there is diversity of citizenship between the Plaintiff and Eldercare.

6. Diversity of citizenship exists because the Plaintiff is alleged to be a citizen of West Virginia, see Complaint at ¶ 1, and Eldercare is not a citizen of West Virginia. As set forth in detail below, Eldercare is a Tennessee limited liability company whose sole member, Vanguard Healthcare, LLC, is a citizen of the state of Tennessee. No members of Vanguard Healthcare, LLC, reside in or are citizens of the state of West Virginia. Eldercare is, therefore, not a citizen of West Virginia.

7. Again, Eldercare's sole member is Vanguard Healthcare, LLC, a Tennessee citizen. Vanguard Healthcare's members are William D. Orand, Sr., the Orand Limited Partnership, and the Ervin General Partnership.

8. William D. Orand, Sr. is a citizen of Tennessee.

9. The Orand Limited Partnership is a Tennessee limited partnership. Its partners are William D. Orand, Sr., Pam Orand, William D. Orand, Jr., and Bradford Orand. William D. Orand, Sr., Pam Orand, and Bradford Orand are all citizens of Tennessee.

William D. Orand, Jr. is a citizen of Texas. Thus, the Orand Limited Partnership is a citizen of Tennessee and of Texas.

10. The Ervin General Partnership is a Tennessee limited partnership. Its partners are Linda M. Ervin, the Jere Suzanne Smothers Irrevocable Trust, the William J. Ervin Irrevocable Trust, the Jere Murphy Smothers 2008 Irrevocable Trust, and the Thomas Mann Smothers 2008 Irrevocable Trust. Linda M. Ervin is a citizen of Tennessee. Because J. Larry Williams is the trustee for each and every one of the aforementioned trusts, and further because he is a citizen of Tennessee, the trusts are Tennessee citizens. Thus, because all of its members are Tennessee citizens, the Ervin General Partnership is a Tennessee citizen.

11. For the reasons stated above, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper under §§ 1441 and 1446.

12. In accordance with 28 U.S.C. § 1446(d), a Notice of Filing, along with a copy of this Notice of Removal, has been sent to all counsel of record and will be filed with the Clerk of Court for the Circuit Court of Jackson County, West Virginia. A copy of the Notice of Filing is attached as Exhibit B.

WHEREFORE, Eldercare requests that the above-captioned action now pending in Jackson County Circuit Court be removed to the United States District Court for the Southern District of West Virginia, and that the District Court assume jurisdiction over this lawsuit.

This, the 2nd day of March, 2018.

ELDERCARE OF JACKSON COUNTY LLC
d/b/a ELDERCARE HEALTH AND
REHABILITATION
By Counsel.

/s/ Megan F. Bosak

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Jeff D. Stewart
Andrew L. Paternostro
Stewart Bell, PLLC
P. O. Box 1723
Charleston, WV 25326

/s/ Megan F. Bosak
Mark A. Robinson (WV Bar ID #5954)
Ryan A. Brown (WV State Bar No. 10025)
Megan F. Bosak (WV State Bar #11955)

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